

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,
vs.

Case No. 04-cv-80385
HON. BERNARD A. FRIEDMAN

D-1 ANTHONY VALENTIN,

Defendant,

_____ /

OPINION AND ORDER DENYING A CERTIFICATE OF APPEALABILITY

On March 15, 2012, this Court issued an opinion and order denying defendant's motion to modify or correct his sentence pursuant to 28 U.S.C. § 2255 ("section 2255") [docket entry 36]. Defendant appealed the order to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 2253(c) [docket entry 38]. The Sixth Circuit subsequently remanded the matter to this Court to determine whether to grant defendant a certificate of appealability. Valentin v. United States, U.S.C.A. No. 12-1440 (6th Cir. Dec. 10, 2012). For the reasons stated below, the Court will deny defendant a certificate of appealability.

28 U.S.C. § 2253(c)(1)(B) states that an appeal from the district court's "final order in a proceeding under section 2255" may not be taken unless either a circuit court or district court judge issues a certificate of appealability (COA). See Fed. R. App. P. 22(b). If an appeal is taken by the movant, the district court judge "must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue." Goward v. United States, No. 02-20043, 2012 U.S. Dist. LEXIS 157602, at *2 (E.D. Mich. Nov. 1, 2012) (citations omitted).

In order to obtain a certificate of appealability, the movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The movant is required to show that reasonable jurists could debate whether, or agree that, the motion should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 483-484 (2000). When a district court rejects a movant’s constitutional claims on the merits, the movant must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims to be debatable or wrong. Id.

Pursuant to the aforementioned standards, the Court will deny defendant a certificate of appealability because jurists of reason would not find this Court’s assessment of the constitutional claims underlying defendant’s section 2255 motion to be debatable or wrong.

Accordingly,

IT IS ORDERED that a certificate of appealability is denied.

Dated: January 25, 2013

s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE